



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-03719
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

05/14/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant’s debts arose from circumstances beyond his control. He is now acting responsibly to resolve his past-due debts and improve his finances. It is unlikely that his financial problems will recur. Clearance is granted.

**Statement of the Case**

After reviewing the results of Applicant’s background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s request for access to classified information.<sup>1</sup> On November 9, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

facts which raise security concerns addressed in the adjudicative guideline<sup>2</sup> for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on February 12, 2013, and I convened a hearing on March 5, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant testified and presented one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the hearing transcript (Tr.) on March 20, 2013. The record closed on March 29, 2013, after receipt of Applicant's post-hearing submission, admitted without objection as Ax. B.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed approximately \$23,922 in past-due debts for seven accounts specified in SOR 1.a - 1.g, all of which Applicant admitted. (Answer; Tr. 8 - 10) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 47 years old and works as a supply technician for a defense contractor. Applicant is a candidate for an overseas position that requires a security clearance. He was hired by his current employer in July 2010. After graduating high school in 1984, Applicant held a variety of jobs before enlisting in the U.S. Army in November 2007. He was honorably discharged with a 30 percent disability in June 2010. Applicant held a security clearance without incident while in the Army. (Gx. 1; Tr. 10 - 14, 31)

Since 1989, Applicant has been married four times. He married his current wife in April 2009, and they have adopted twin children, now age four. His previous marriages all ended in divorce and produced no children. (Gx. 1)

Beginning around 2000, Applicant experienced difficulty properly managing his personal finances. A debt remaining from a car repossession, alleged at SOR 1.d, occurred while he was in basic training. Of the remaining debts alleged in the SOR, all but one, a \$1,123 property tax debt alleged at SOR 1.e, arose during Applicant's marriage to his second wife between June 2001 and January 2006. The tax debt went unpaid when he divorced his first wife in 2001. Each thought the other had paid the bill. (Gx. 2 - 5; Tr. 28 - 30)

For most of his second marriage, Applicant worked as a long-distance truck driver and was away from home for long periods. He relied on his ex-wife to manage their household finances and pay their bills on time. However, she opened unnecessary credit card accounts, wrote bad checks, and did not keep up with their bills. Applicant

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<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

became aware of these problems around the time they divorced and changed jobs to stay at home. However, this resulted in lower income and he was unable to resolve all of his debts at that time. (Gx. 2; Tr. 31, 33)

Applicant's 2007 military enlistment at age 41<sup>3</sup> was, in part, an effort to find steady employment with family benefits and a better income. Unfortunately, he injured his back in the line of duty and was physically unable to finish his enlistment. Applicant receives disability payments of about \$1,000 each month from the Department of Veterans Affairs (VA). (Gx. 1; Gx. 2; Tr. 31 - 32)

Applicant disclosed he had unpaid debts when he submitted his Electronic Questionnaire for Investigations Processing (eQIP). His eQIP disclosures and his interviews with Government investigators also indicated that he had resolved other debts not alleged in the SOR. (Gx. 1; Gx. 2; Tr. 19 - 20, 44 - 45)

Applicant and his current wife have started a debt management plan (DMP) that will resolve his remaining unpaid debts in four years through monthly payments of \$405. Under the DMP, his payments are automatically deducted from his checking account. A personal financial statement (PFS) he submitted in August 2012, before he established the DMP, showed Applicant and his wife had about \$870 remaining each month after expenses. At hearing, Applicant estimated they now have \$500 remaining each month after expenses, including the DMP payment. They are also on a regular budget established as part of the DMP, and Applicant has not incurred any new unpaid debts since he divorced his third wife. (Gx. 2; Ax. A; Ax. B; Tr. 22 - 24, 32, 34 - 39)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

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<sup>3</sup> At the time Applicant enlisted, the Army had received permission to raise the maximum age for enlistment from 35 to 42. Effective April 1, 2011, the maximum age was returned to 35.

<sup>4</sup> See Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

## Analysis

### Financial Considerations

The Government's information supported the SOR allegations that Applicant accrued significant delinquent debt between about 2000 and 2009. Until recently, most of his past-due debts remained unresolved. That information raised a security concern expressed, in relevant part, at AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), information shows an inability to pay, not an unwillingness.

Most of Applicant's debts arose because his second wife mismanaged their finances in his absence between 2001 and 2006. However, available information also showed that Applicant has been trying to correct his financial problems by taking employment that did not require him to be away; by enlisting in the Army; and by enrolling in a DMP. His initial change of employment helped him regain control of his finances, but did not allow him to earn enough to resolve much of his debt. His Army enlistment was cut short when he was medically discharged. Since leaving the Army and marrying his current wife, he has resolved debts that were not alleged in the SOR, he has not incurred any new delinquencies, and he has embarked on a structured repayment plan and budgets his money responsibly. He and his wife have a good monthly cash flow, and they are unlikely to experience a recurrence of the financial problems documented by the Government's information.

All of the foregoing supports application of the following AG ¶ 20 mitigating conditions:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems do not reflect adversely on his judgment or reliability. His financial problems did not arise from any misconduct, and he has been as proactive as his circumstances permit in trying to resolve his debts. Applicant has mitigated the security concerns about his finances.

## **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a 47-year-old Army veteran, who has endeavored for most of the past seven years to resolve his financial problems. I found his testimony to be credible and straightforward, and all available information shows he is a mature, responsible adult. His personal and professional circumstances are now more stable than in the past, and he is likely to successfully complete the debt resolution efforts currently in place. A fair and commonsense assessment of available information shows that Applicant has mitigated the security concerns about his finances.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                   FOR APPLICANT

Subparagraphs 1.a - 1.g:                 For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge